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COURT URGED TO HOLD VA ACCOUNTABLE FOR ERRORS IN PROCESSING CLAIMS

(Peake v. Sanders, No. 07-1209)

The Washington Legal Foundation (WLF) this week urged the U.S. Supreme Court to affirm a federal appeals court ruling that holds the U.S. Department of Veterans Affairs (VA) accountable when it commits significant procedural errors in processing disability claims submitted by veterans.

In a brief filed in *Peake v. Sanders*, WLF argued that when the VA commits procedural errors and a veteran sues to overturn a decision denying him benefits, a reviewing court should presume that the veteran was prejudiced by the procedural errors unless the VA affirmatively demonstrates that there was no prejudice. The VA is asking the Supreme Court to adopt the opposite presumption -- it argues that claimants for disability benefits should bear the burden of demonstrating that they were, indeed, prejudiced by any procedural errors committed by the VA during the administrative process.

WLF filed its brief on behalf of itself, the Allied Educational Foundation, Rear Admiral (Ret.) James J. Carey, and four veterans organizations that advocate on behalf of veterans: the American Military Retirees Association, the National Defense Committee, the National Veterans Organization of America, and Veterans United for Truth.

"We are concerned that the position espoused in this case by the VA, if adopted by the Court, will render meaningless provisions of federal law designed to guarantee that the VA will assist veterans in developing viable claims," said WLF Chief Counsel Richard Samp after filing WLF's brief. "Most veterans who apply for disability benefits cannot afford to hire an attorney. Without the VA's assistance -- which Congress has required the VA to provide -- many veterans will be unable to marshal the evidence necessary to support their claims. But unless the Supreme Court holds the VA's feet to the fire, the VA will have a reduced incentive to provide the assistance that many veterans so desperately need," Samp said.

The case involves disability claims submitted by two veterans: Woodrow Sanders (who claims that his left eye was injured by an explosion that occurred while he was engaged in combat operations) and Patricia Simmons (who claims to have suffered a service-connected hearing loss). The VA rejected both veterans' disability claims, and they sought judicial review of the denials. The U.S. Court of Appeals for Veterans Claims determined that in both cases the VA failed to comply with notification requirements imposed on the VA by the

Veterans Claims Assistance Act of 2000 (VCAA). The VCAA requires the VA to notify a claimant before making any determination on the claim, regarding: (1) all information not yet provided to the VA that is necessary to substantiate the claim; and (2) which portion of that information must be supplied by the claimant and which portion the VA itself will attempt to supply. The VA failed to fulfill the first notification requirement with respect to Simmons, and allegedly failed to fulfill the second notification requirement with respect to Sanders.

The U.S. Court of Appeals for the Federal Circuit held that the VA's failure to comply with VCAA notification requirements is presumptively prejudicial to a veteran who has submitted a disability claim. The Federal Circuit held that unless the VA demonstrates that its errors did not prejudice the claimant (for example, by demonstrating that the claimant knew precisely what medical information the VA required him to provide), the denial of benefits should be vacated and the case remanded to the VA for a new determination. The VA persuaded the Supreme Court to grant review, arguing that the decision below will impose tremendous logistical burdens on administrators.

In its brief, WLF argued that a fair reading of the entire statutory scheme governing VA claims leads to the conclusion that Congress intended to place on the VA the burden of demonstrating that its own errors in notifying a claimant did not prejudice the claimant. WLF argued that there is nothing anomalous about imposing the burden of proof regarding prejudice on the administrative body that committed the procedural error; it argued that courts have assigned the burden of proof in that manner whenever, as here, an error is of such a character that its natural tendency is to prejudice a litigant's substantial rights.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a significant portion of its resources to protecting the constitutional and civil rights of individuals.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.